

Remarks

Claims 10-14, 21, 27 and 28 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,462,770 (Cline et al) "Cline". Claim 10 describes optics for scanning the illumination to an object and receiving returned illumination representing at least one section of the object, means for detecting the returned illumination and forming a signal representative of an image of the section of the object, and means for displaying the image of the section of the object in accordance with the signal. It is the Examiner's position that FIG. 6, mirror 186, and various lenses of Cline, receive returned illumination representing at least one section of the object. It is respectfully submitted that the Examiner is incorrect. Cline describes a "combination camera head 42 ... [having] a mode switch mechanism 67 that directs the light received from the endoscope 40 to either the RGB video camera head 46 or the fluorescence camera head 44" (see column 5, lines 34-38, and FIG. 6). The images produced by Cline include surface features as well as the visible bulk properties of the underlying volume without any restriction to light from a section. Clearly, neither a RGB video camera head 46, a fluorescence camera head 44, nor any optics or mirrors for directing light thereto, are capable of restricting any light from the tissue to a section. In fact, a word search of the Cline patent does not find one instance of the word "section".

It is the Examiner's position that Cline forms an image of a section since it images surface features of an object. In order to clarify the invention, rather than to overcome this rejection, Claim 10 is amended to describe that the section is capable of being below the surface of the object. As Cline therefore lacks each and every element of Claim 10, Cline cannot anticipate Claim 10. For similar reasons, Cline also does not anticipate method Claim 27. Withdrawal of the anticipation rejection of Claims 10 and 27 and of their respective dependent Claims 11-14, 21 and 28 is requested.

The rejection of Claims 12-13 as being directed to intended use is not well taken. In Claim 12, the word "confocal" further defines the optics and detection means used, and is a structural limitation as it describes a characteristic or feature of such elements. Claim 13 describes that the system of Claim 10 as being adapted for imaging by one of confocal microscopy, optical coherence tomography, and two-photon microscopy. These are different imaging modalities capable of providing the claimed image of a section of Claim 10, and are not directed to intended use but to how imaging of a section can be enabled. Cline does not describe,

or even suggest, the use of confocal optics, confocal detection, confocal microscopy, optical coherence tomography, or two-photon microscopy.

Claims 32-34, 36 and 37 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,906,745 (Fossum et al.) "Fossum". Claim 32, as amended, describes at least one image capable of representing a section below the surface of an object. Fossum fails to describe any image that is capable of representing a section below the surface of an object. Accordingly, Fossum cannot anticipate Claim 32 or its dependent Claims 33, 34, 36, or 37, and withdrawal of the rejection is requested.

Claim 22 was rejected under 35 U.S.C. 103(a) as being unpatentable over Cline in view of Fossum. Claim 22, as amended, describes at least one image capable of representing a section below the surface of tissue. Neither Cline, nor Fossum, describes or suggests such an image, and thus Claim 22 is patentable over Cline and Fossum, either alone, or in combination. Withdrawal of the rejection of Claim 22 is requested.

Claims 1-9, 25 and 26 have been allowed.

Claims 15-18, 31 and 35 were objected to as being dependent upon a rejected base claims, but would be allowable if rewritten in independent form including all the limitation of the base claims and any intervening Claims. Claims 15-18 and 31 depend on base Claim 10, and are believed allowable along with Claim 10. Claim 35 has been amended to include all the limitations of base Claim 32, and thus Claim 35 should stand allowable.

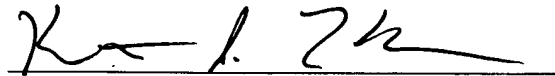
Claim 38 has been added to the Application and describes an automatic gain controller which includes subject matter found allowable in Claim 35.

It is believed that the Application is in condition for allowance, and a Notice of Allowance is respectfully requested.

Dated: January 26, 2007

3136 Winton Road South, Suite 301
Rochester, New York 14623
Telephone: (585) 424-2670
Facsimile: (585) 424-6196

Respectfully submitted,



Kenneth J. LuKacher
Attorney for Applicant(s)
Registration No. 38,539